In the High Court of Punjab and Haryana at Chandigarh.

F.A.O.No.3616 of 2004.

Date of decision:1.11.2006.

Gurmukh Singh.

...Petitioner.

Versus

Bhupinder Singh and another.

...Respondents.

...

Coram: Hon'ble Mr. Justice S. N.Aggarwal.

...

Present: Mr.K.S.Boparai Advocate for the appellant.

Mr.Raman Walia Advocate for the respondents.

...

Judgment.

S.N. Aggarwal, J.

Elections for the office of Sarpanch of village Ghumandgarh, Tehsil Bassi Pathana District Fatehgarh had taken place on 29.6.2003. Gurmukh Singh appellant and Bhupinder Singh, respondent No.1 had contested the elections. After counting of votes, the result was as under:-

Gurmukh Singh, appellant.	379 votes.
Bhupinder Singh,respondent.	381 votes.
Cancelled votes	19 votes

Missing 1 vote

The appellant filed the Election Petition challenging the election of Bhupinder Singh respondent on numerous grounds.

The respondent filed written statement and contested the petition.

Issues were framed.

The appellant examined himself as PW-1 and Surinder Singh was examined as PW-2.

Mangat Ram, Returning Officer appeared as RW-1 while Bhupinder Singh respondent appeared as RW-2.

The learned Election Tribunal found that no ground was made out for setting aside the election of Bhupinder Singh and dismissed the Election Petition vide order dated 6.5.2004.

Hence the present appeal.

The submission of learned counsel for the appellant was that two persons were living abroad. Their votes were cast in favour of the respondent by impersonators. It was also submitted that two persons had cast their votes in a different village and still they were allowed to cast their votes in village Ghumandgarh. It was also submitted that some of the votes polled in favour of the appellant were counted in favour of the respondent. The other submission was that one vote was missing. It was also submitted that a plea for re-counting of votes was raised before the Election Tribunal, but it remained undecided.

Since the allegations were serious, this Court vide order dated 20.9.2006 directed the appellant to deposit a sum of Rs.30,000/- to prove his bona fide and when the amount was deposited, the election record was called and the learned District & Sessions Judge (Vigilance) Punjab was directed to find out if two persons who were living abroad and who had polled their votes were cast in favour of Gurmukh Singh appellant or Bhupinder Singh, respondent. He was also directed to find out if any vote polled in favour of the appellant was counted in favour of Bhupinder Singh,respondent. The learned District & Sessions Judge (Vigilance) Punjab was also desired to find out if the missing vote was traceable. The learned District & Sessions Judge (Vigilance) Punjab submitted his report dated 16.10.2006. He had called the record and observed that the parcel containing ballot papers was in torn condition on which the seals were lying broken. However, after recounting of votes,the following result was found:-

Total votes polled	780
Total votes found in the envelope	775
Gurmukh Singh,appellant.	377 votes
Bhupinder Singh,respondent.	381 votes.
Cancelled	17 votes
Missing	5 votes.

He also reported that voters at serial Nos.273 and 161 i.e.Navdeep Singh and Balwinder Singh (who were living abroad, according to the version of the appellant), had polled their votes in

favour of Bhupinder Singh, respondent. The whole process of counting the votes and checking up votes of the voters at serial Nos.161 and 273 was conducted by the learned District & Sessions Judge (Vigilance) Punjab in the presence of the parties and their learned counsel.

After the receipt of the report of learned District & Sessions Judge (Vigilance), Punjab, the learned counsel for the parties advanced their contentions.

The first contention of learned counsel for the appellant was that Navdeep Singh registered as a voter at serial No.273 and Balwinder Singh registered as a voter at serial No.161 were living abroad and some fictitious persons had polled their votes in favour of the respondent and,therefore, the respondent was declared elected on the reception of fictitious votes. Hence, it was prayed that his election be set aside.

This submission has been considered. The Election Petition filed before the Election Tribunal has been examined. It was pleaded in para No.5 as under:-

> "That the election of the respondent No.1 for the post of Sarpanch of Gram Panchayat of village Ghumandgarh, Tehsil & Block Bassi Pathanan, held on 29-6-03 is illegal, null and void and is liable to be set aside on the following grounds:-
>
> (i) to (iv) xx xx xx xx
>
> (v) That vote No.273 namely Navdeep Singh son of

Gurmel Singh and vote No.161 as shown in the voter list namely Balwinder Singh son of Gajjan Singh were/are out of India and are residing in England and Greek respectively but their votes were illegally polled in favour of the respondent No.1 in connivance with polling staff by the members of respondent No.1. Objection to this effect was raised by the petitioner and his other members but same was not considered by the respondent No.2 and his other polling staff members."

Reply to this Election Petition was filed by respondent No.1 i.e. Bhupinder Singh, respondent. In the written statement,he replied as under:-

"Sub para v of the petition is wrong and denied.

However, vote serial No.273 namely Navdeep Singh and vote No.161 Balwinder Singh son of Gajjan Singh, whether polled or not polled the votes is the matter of record. Moreover, both the said voters belong to the group of the petitioner. The petitioner never raised any objection against the said votes as alleged by him in this para of the petition. It is wrong to state that the vote serial No.273 and No.161 have been polled in favour of the respondent No.1.If it is proved that the said votes have been polled, it is got polled by the petitioner in his favour. Respondent has no concern or connection with the above said two votes."

It is patently clear from the written reply filed by Bhpinder Singh respondent that he had not denied if Navdeep Singh, registered as a voter at serial No.273 and Balwinder Singh, registered as a voter at serial No.161 were living abroad. He had only pleaded that no such objection was raised by the appellant nor the votes of those voters were polled in his favour.

The learned Election Tribunal has rejected this objection of the appellant by observing that no evidence was brought by the petitioner i.e. by the appellant to prove if votes registered at serial Nos.273 and 161 have been polled or not or if they were living abroad. This observation is falsified by the fact that it was not denied even by respondent No.1 in the written reply if these two persons i.e. Navdeep Singh and Balwinder Singh were living abroad. Otherwise also, Gurmukh Singh appellant while appearing as PW-1 deposed on oath that Navdeep Singh son of Gurmel Singh and Balwinder Singh son of Gajjan Singh were living abroad. Similar statement was made by Surinder Singh PW-2 who deposed that these two persons namely Navdeep Singh and Balwinder Singh were living abroad. Therefore, if some evidence was required to prove that these two persons namely Navdeep Singh and Balwinder Singh were living abroad, it has been produced by the appellant. On the other hand, this fact was not contradicted by Bhupinder Singh, respondent either in the written reply or while appearing as RW-2. It is, therefore, proved that both Navdeep Singh and Balwinder Singh, registered as voters at serial Nos.273 and

161 of the voter list were living abroad.

The plea taken by Bhupinder Singh respondent was that these persons belonged to the group of the appellant and if those two persons had polled their votes,they have done so in favour of the appellant. The report of the learned District & Sessions Judge (Vigilance), Punjab, clearly proves that the voters registered at serial Nos.273 and 161 have polled their votes in favour of Bhupinder Singh,respondent. This report is signed not only by the learned counsel for the parties but also by the parties themselves. It is, therefore, proved that these two persons living abroad had allegedly polled their votes in favour of Bhupinder Singh, respondent.

The appellant had taken a specific plea in para No.5 that objection to this effect was raised by him and other members of his party but it was not considered by the Returning Officer. Although the Returning Officer as well as respondent No.1 have denied these allegations but when analyzed by the natural course of human conduct, it can be easily concluded that such an objection was raised by the appellant. Even if for the sake of arguments, it is taken that no such objection was raised, the fact remains that these two persons who were living abroad had actually not polled their votes and some other persons had polled those two votes in favour of Bhupinder Singh,respondent. The illegal reception of votes in favour of returned candidate makes the election process to be void.

Section 89 of the Punjab State Election Commission

Act,1994 (in short PSEC Act of 1994) lays down the grounds for declaring the election to be void. Clauses (b) and (d) of this Section read as under:-

> "89. Grounds for declaring election to be void.-(1) Subject to the provisions of sub-section (2), if the Election Tribunal is of the opinion,-
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> (a) .. ..
>
> (b) that any corrupt practice has been committed by a returned candidate or his election agent or by other person with the consent of a returned candidate or his election agent; or
>
> © .. ..
>
> (d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected,-
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> (i) by the improper acceptance of any nomination; or
>
> (ii) by any corrupt practice committed in the interest of the returned candidate by an agent other than his election agent; or
>
> (iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void;or
>
> (iv) by any non-compliance with the provisions of the Constitution of India or of this Act or of any rules or orders made under this Act;
>
> the Election Tribunal shall declare the election of the

returned candidate to be void."

In the present case, Bhupinder Singh,respondent No.1 was declared elected by two votes and once it is conclusively proved that two votes cast in his favour were illegal and were improperly received through an impostor,it makes the whole election process to be void.

Another supplementary argument raised by the learned counsel for the appellant was that one vote was missing even at the time of original counting. It was specifically pleaded in para No.4 of the Election Petition as under:

> "That as per the alleged result declared on 29-6-03 total votes polled 780, out of which 381 votes shown polled to respondent No.1,while 379 votes shown polled to the petitioner,19 votes shown as cancelled votes,one ballot paper was missing from the total votes."

Bhupinder Singh had filed written reply and this paragraph was answered as under:-

> "That para No.4 of the petition is a matter of record. But further stated that the result was rightly declared on 29-6-03 and the respondent No.1 is declared as elected Sarpanch of the Gram Panchayat Ghumandgarh legally as the respondent No.1 obtained more votes than the petitioner."

Even respondent No.2 i.e. the Returning Officer had filed written statements. In reply to this paragraph, it was pleaded by him as under:-

> "That para No.4 of the election petition needs no written statement as it is a matter of record. The result was declared as per record on that date according to law and rules without any prejudice towards any person"

The perusal of these pleadings clearly reveals that it was not denied either by Bhupinder Singh,respondent or by the Returning Officer, respondent No.2 that one vote was missing. The missing vote was not reported by the Returning Officer which was his duty to do. Section 67 of the P.S.E.C Act,1994 provides that the Returning Officer was duty bound to report the matter to the Election Commission. It reads as under:-

> "67(1) Destruction, loss etc. of ballot papers at the time of counting.-(1) If at any time before the counting of votes is completed, any ballot papers used at a police station or at a place fixed for the poll are unlawfully taken out of the custody of the Returning Officer or are accidentally or intentionally destroyed or lost or are damaged or tampered with,to such an extent that the result of the poll at that polling station or place cannot be ascertained, the Returning Officer shall forth-with report the matter to the Election Commission."

The Returning Officer, therefore, has not followed the procedure laid down in the Act. In the context of the facts of the present case, one missing vote could have changed the result. As a

result of the discussion held above, it clearly reveals that the election has been vitiated by reception of votes improperly and illegally and is liable to be set aside.

It may be mentioned that the appellant was directed to deposit a sum of Rs.30,000/- to prove his bona fide in support of the allegations made by him. The appellant had deposited that amount.

The submission of learned counsel for contesting respondent was that the amount of Rs.30,000/- be forfeited to the State as the appellant has failed to prove if any vote polled in his favour was counted in favour of Bhupinder Singh, respondent. The report of the learned District & Sessions Judge (Vigilance) Punjab clearly reveals that no vote polled in favour of Gurmukh Singh, appellant was counted in favour of Bhupinder Singh and Bhupinder Singh had actually secured 381 votes. Hence, it was prayed that since this allegation made by the appellant was found to be false, therefore, in terms of the order passed by this Court on 20.9.2006, this amount be forfeited to the State.

This submission has been considered. Gurmukh Singh,appellant had levelled two material allegations. The first was that the votes registered at serial Nos.273 and 161 have been polled in favour of Bhupinder Singh and the second was that the votes polled in his favour were counted in favour of Bhupinder Singh, respondent. One of the allegations has been found to be correct which has tilted the result of this appeal and the whole election process has been held to be

void. Even if the other allegation has not been found to be correct, there is no justification to forfeit the amount.

Keeping in view the discussion held above, this election appeal is accepted. The election process held in this case is held to be void and vitiated and,therefore, the election of the respondent as Sarpanch, Gram Panchayat of village Ghumandgarh is set aside. The State Election Commission,Punjab is directed to re-conduct the election for the office of Sarpanch of village Ghumandgarh within four months after the receipt of a copy of this order. The amount of Rs.30,000/- deposited by the appellant be refunded to him.

November 1 ,2006. (S. N. Aggarwal)
Jaggi Judge